

U.S. Patent Application No. 10/701,331
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REMARKS/ARGUMENTS

Claims 1-35 are presently pending. Claims 11-18 have been withdrawn, consistent with the election of the claims of Group I. No claim amendments are presented herein.

Applicants thank the Examiner for the courtesy of confirming via telephone on January 18, 2006 that the restriction requirement issued in the January 10, 2006 Office Action was intended to include an additional group. Group V, covering claims 17-18 drawn to a recombinant nucleic acid comprising an erythrocyte-specific promoter, had been inadvertently omitted from the January 10 Action. Further, Applicants thank the Examiner for confirming that the election of Group I includes, in part, generic or "linking" claims 1-8, 19-21, and 23-32.

Traversal of Species Restrictions

The Examiner has required election of a species for examination in each of claims 3, 4, 5, 7, 10, 12, 16, 21, and 34. The Examiner identifies as grounds for restriction only that the species are patentably distinct.

Applicants respectfully traverse these species restrictions. M.P.E.P. § 803.02 provides:

[i]f the members . . . are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all members.

Accordingly, the Examiner must demonstrate a serious search burden in examining all of the claimed species.

The Examiner has not asserted, nor demonstrated, a serious search burden. For example, in addition to the elected species, claim 16 contains one additional species, and claims 4 and 7 contain two additional species. Only claim 21 contains in excess of four

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additional species. In view of the number of species presented in the claims, examination of all species within each of these claims is not a serious search burden.

In view of the above, Applicants respectfully request reconsideration and withdrawal of these species restrictions.

In the alternative, the Examiner is respectfully requested to expand the search beyond the elected species in the event no prior art is found, consistent with M.P.E.P. §803.02. Further, the Examiner is respectfully requested to withdraw these species restrictions upon the allowance of linking claims 1-8, 19-21 and 23-32 in accordance with 37 C.F.R. §1.141 (*See* M.P.E.P. §809.02(a)).

The Director is hereby authorized to charge any deficiency in any fees due with the filing of these papers, or credit any overpayment of fees, to our Deposit Account, Number 08-3040.

Respectfully submitted,

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